Administration of the estate of one Lee Siew Kow deceased and the defendant claims that she is a widow of the deceased and as such seeks to share in the grant of Letters of Administration.

The plaintiffs deny that she is a widow and pleadings have been delivered. The claim of the defendant is set out in paragraph 2 of the Defence which reads as follows :—

"2. As to paragraphs 3 and 5 thereof, the defendant/caveatrix says she too is a lawful widow of the deceased having met him in or about 1934, since which year and till his death the defendant/caveatrix co-habited with the deceased as his lawful wife and was recognized as such by his friends and relations. The defendant/caveatrix being a widow as aforesaid of the deceased is therefore entitled to share in the proceeds of the estate of the deceased and should be joined as a party in the petition for letters of administration herein."

On this the plaintiffs have asked for further and better particulars in the following terms :—

"Under Paragraph 2: (1) Of the dates and addresses at which the alleged co-habitation is alleged to have taken place and of the periods, if such there be, of such co-habitation.

"(2) Of the names of the deceased's friends and relatives who are alleged to have recognized the Defendant Caveatrix as the lawful wife of the deceased and of the times, places and manner in which such alleged recognition was afforded."

I do not think that any difficulty arises as to (1).

There is some difficulty as to (2). The basic principle is that the pleading must contain "a statement in a summary form of the material facts.... but not the evidence by which they are to be proved."

The meaning of "material facts" is explained in the often cited passage of Cotton, L.J., in *Philipps v. Philipps*[1]; "the pleading .... should state those facts which will put the defendants on their guard and tell them what they have to meet."

One has in these cases to consider what the party pleading sets out to prove. Then one has to consider whether it has been set out with sufficient precision. The parties by their pleadings define the issues of fact which the Court will have, ultimately, to decide. The defendant alleges that she was recognized as a wife by the friends and relations of the deceased. Whether this is relevant or not, or the extent to which it is relevant, does not concern us at this stage. What does concern us is that the defendant alleges recognition as a material fact. She appears to allege recognition by all the relatives and friends of the deceased. But in any event the significance of the recognition appears to depend on the status of the person alleged to have so recognized her, qua friend or qua relation. When it is alleged that someone else has done something the significance of which depends on the status of that person it appears to me that the pleading is lacking in precision if it fails to set out who the person is. The fact that it is impossible to be precise without disclosing the names of witnesses is immaterial.

I think that the plaintiffs are entitled to the particulars asked for.

Order in terms of summons.

Order accordingly.

HO SENG SENG v. REX.

[App. Cr. Juris. (Brown, Ag. C.J.) August 22, 1951]

[Singapore — Magistrate's Appeal No. 87 of 1951]

Dangerous Drugs Ordinance, 1951, ss. 6 and 37 — Possession — Onus of proof — Words "control" and "custody" — Meaning of.

In this case the appellant was charged and convicted by the learned District Judge of possession 385½ tahils of raw opium an offence punishable under section 6 of the Dangerous Drugs Ordinance. The prosecution proved that when arrested the appellant was carrying a basket and on examination of its contents there was found to be over 30 pounds of opium.

The learned District Judge took the view that the prosecution having proved that the opium was in the basket which the appellant was carrying, section 37(d) of the Ordinance had the effect of shifting the onus to the appellant to prove that he did not know that it was there.

The appellant who was sentenced to three years rigorous imprisonment appealed on the grounds inter alia that the learned District Judge had misdirected himself upon the burden of proof.

Held, that (1) the onus of proving that the appellant knew that the parcel he was carrying contained a dangerous drug was upon the prosecution; (2) that the learned District Judge had misdirected himself upon the burden of proof.

Appeal allowed, conviction and sentence quashed.

Cases referred to :—

(1) *Wong Hock Lay v. Rex* Magistrate's Appeal No. 57 of 1949 (unreported).

(2) *Toh Ah Loke v. Rex* (1949) M.L.J. 54.

MAGISTRATE'S APPEAL.

M. B. Brash for the appellant.

E. P. Shank (Crown Counsel) for the Crown.

Cur. Adv. Vult.

Brown, Ag. C.J. : — The appellant was found carrying a basket containing one large paper parcel and one small. The large parcel, which was on top, contained 12 pieces of opium. The appellant was convicted of having in his possession 385½ tahils of raw opium contrary to section 6 of the Dangerous Drugs Ordinance, 1951. When he was arrested the appellant said that the basket had been handed to him by another person. His defence in Court was that it had been handed to him by a man named Ah Tan, who had asked him to go to a coffee shop and wait for him there, and that he knew nothing of the contents of the basket.

The learned District Judge took the view that, the prosecution having proved that the opium was in the basket which the appellant was carrying, section 37(d) of the Ordinance had the effect of shifting the onus to the appellant to prove that he did not know that it was there. Whether his interpretation of this section was correct is the question which I have to determine.

Section 37(d) reads as follows :—

"(d) any person who is found to have had in his custody or under his control any dangerous drug shall, until the contrary is proved, be deemed to have been in possession of such drug and shall, until the contrary is proved, be deemed to have known the nature of such drug."

This Ordinance repealed the Deleterious Drugs Ordinance (Cap. 190) and the Opium and Chandu Proclamation. Section 37(d) is said to have been taken from section 24(2) of the repealed Ordinance. But there is an important difference. Section 24(2) read :—

"Any person who is proved to have had in his possession or under his control any thing whatsoever containing any deleterious drug shall, until the contrary is proved, be deemed to have been in possession of such drug, and shall, until the contrary is proved, be deemed to have known the nature of such drug."

Clearly if the Legislature had retained the presumption in a case where a deleterious drug is found in a container of which the accused is proved to have been in possession, this point would not have arisen in this case.

Section 18 of the repealed Proclamation read :—

"When in this Proclamation possession of anything constitutes an offence such possession shall include any custody or control of such thing and it shall not be necessary to prove that the person in possession of such thing was the owner of such thing or was aware of the nature quality or contents of such thing:

(i) No person shall be convicted of an offence under this Proclamation solely because he was in possession of any thing if that person proves to the satisfaction of the Court that he was not aware of the nature quality or contents of such thing and that he came into possession and continued in possession of such thing in such circumstances as to have no reasonable cause to know or to suspect the nature quality or contents of such thing."

It was held in *Magistrate's Appeal No. 57 of 1949*[1] that the effect of this section of the Proclamation was to help the prosecution in a case where possession of chandu is proved but the person charged says that he did not know that it was chandu "It does not help the prosecution to prove possession — in particular, knowledge that the offending thing was there".

If the learned District Judge is right in saying that section 37(d) of the present Ordinance "was drafted for the purpose of excluding the authority of the cases which interpret section 18 of the Proclamation", I do not think that the Legislature has succeeded in doing so. I think that the element of knowledge is implicit in the word "custody" and in the word "control". "Custody" means watching over or keeping safe. You cannot watch over a thing or keep it safe unless you know it is there. Similarly you cannot have "control" of a thing unless you know it is there. It follows that in the present case the onus was upon the prosecution to prove to the satisfaction of the Court that the appellant knew that a dangerous drug was in the basket. If they had proved that, then section 37(d) would have raised the presumption that the appellant was in possession of it and knew that it was opium.

I was at one stage inclined to think that this interpretation would make the section meaningless. But I do not think it does. The terms "custody" and "control" have more restricted meanings than the term "possession". It was laid down by the Court of Criminal Appeal in *Toh Ah Lok and Mak Tin v. Rex*[2] that possession, in order to incriminate a person, must have the following characteristics : (a) the possessor must know the nature of the thing possessed; (b) he must have a power of disposal over it; and (c) he must be conscious of his possession of the thing. I think that the term "custody" contains characteristic (c); and that the term "control" contains characteristics (b) and (c); and that the effect of section 37(d) of the present Ordinance is that where the prosecution has proved (c) [and a *fortiori* where they have proved (b) and (c)], they are to be deemed to have proved (a), (b) and (c). In other words, the position is the same as it was under section 18 of the repealed Proclamation, which provided that the wider term "possession"

included the narrower terms "custody" and "control". Thus if the prosecution, under the repealed Proclamation, proved custody [characteristic (c)] or control [characteristics (b) and (c)] they were deemed to have proved "possession" in its full meaning "and it shall not be necessary to prove that the person in possession of such thing ..... was aware of the nature ..... of such thing" — viz. characteristic (a).

In the view which I take of the correct interpretation of section 37(d) the learned District Judge misdirected himself upon the burden of proof, and the appeal must be allowed.

Appeal allowed

SIM CHWEE CHUA v. REX.

[App. Cr. Juris. (Murray-Aynsley, C.J.) October 1, 1951]

[Singapore — Magistrate's Appeal No. 111 of 1951]

Dangerous Drugs Ordinance, 1951, ss. 4, 5 and 6 — Possession.

In this case the appellant was charged for importing 174 lbs. of raw opium an offence contrary to section 4(1) and punishable under section 4(2) of the Dangerous Drugs Ordinance, 1951; alternatively for possession of the said opium contrary to sections 4 and 5 and punishable under section 6 of the said Ordinance. The learned District Judge found the appellant guilty on the alternative charge and sentenced him to two and half years rigorous imprisonment. The undisputed facts briefly were as follows: — At about 6.10 a.m. on the 31st May 1951 a party of Revenue Officers chased, stopped and searched a motor sampan with appellant as the sole occuppant, heading for land. In the aft, underneath a loose board they found 52 slabs of black substance, and fore another 27 slabs, which were subsequently proved by the Chief Chemist to be raw opium.

The appellant's defence was that he had no knowledge that there was opium abroad as on 21st May 1951 some ten days before his arrest he had hired the sampan for two weeks to one Tan Hu Chin who had come to him on the afternoon before the day of his arrest and told him that the sampan has broken down outside the breakwaters and that the appellant should carry out the repairs immediately. He stated that at the time of his arrest he was on his way to return the sampan to Tan Hu Chin. Tan Hu Chin gave evidence and stated that he himself had taken delivery of the opium in question from a ship lying outside the breakwaters and concealed it in the sampan when it was discovered at the time of the appellant's arrest.

The learned District Judge found it (i) "exceedingly difficult to believe that the accused had no knowledge that the opium was in the boat", (ii) "hard to believe" Tan who was, he was convinced "a stooge who was prepared to take the rap for money" and (iii) proved that the appellant was fully aware that there was in the sampan opium of which he had the custody and control. The accused was accordingly convicted and sentenced to two years and six months imprisonment.

The appellant appealed on the grounds inter alia (a) that there was no evidence to support the finding of the learned District Judge that the appellant was fully aware that there was opium in the sampan (b) that the learned District Judge did not, as he might have done, find that any of the presumptions contained in section 37 of the Dangerous Drugs Ordinance, 1951, arose and therefore did not consider, as he should then have done, whether the appellant had rebutted such presumption.

Held, that the evidence justified the finding of the District Judge, who had in his Judgment dealt with all relevant matters. Appeal dismissed.

MAGISTRATE'S APPEAL.

M. B. Brash for the appellant.

A. D. Farrell (Crown Counsel) for the Crown.

Murray-Aynsley, C.J. : — In this case I reserved judgment because of the citation of an unreported decision* of Mr. Justice Brown which was not familiar to me. After considering it I agree with the learned Crown Counsel that it has no application here.

I agree with the admirable judgment of the learned District Judge which, I consider, deals with all relevant matters and I do not wish to add anything. The appeal is dismissed.

Appeal dismissed.

TAN WEE HAN & ANOR. v. MEYAPPA CHETTIAR.

[Court of Appeal (Taylor, Spenser Wilkinson and Wilson, JJ.) November 19, 1951]

[F.M. — Civil Appeal No. 26 of 1951]

Debtor and Creditor (Occupation Period) Ordinance, 1948, s. 11 — Construction of s. 11 — Priorities — Distinction between reinstatement and replacement.

Where a mortgagor paid a mortgagee in occupation currency and directed the mortgagee to transfer the mortgage to a third party, in lieu of reconveyance, the mortgage was discharged as regards the original mortgagee but a post-war mortgage of the same property for the amount due on revaluation is a reinstatement, not a replacement, of the security. Appeal dismissed.

APPEAL from the judgment of Jobling, J. reported at p. 75 (1951) Malayan Law Journal.

Ong Huck Lim for appellant No. 1.

R. D. Hume for the respondent.

The facts and arguments appear sufficiently from the judgments of Taylor and Spenser Wilkinson, JJ.

Cur. Adv. Vult.

Taylor, J. : — This is a reinstatement appeal under the Debtor-Creditor Ordinance. The circumstances are a little unusual. Stripped of matters no

* The decision referred to is that of Ho Seng Seng v. Rex reported in this issue at p. 225 — Ed. M.L.J.